

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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)
In Re:) SIPA LIQUIDATION
)
BERNARD L. MADOFF INVESTMENT) No. 08-01789 (BRL)
SECURITIES LLC,) (Substantively
) Consolidated)
Debtor.)
-----)
IRVING H. PICARD, Trustee of the)
Liquidation of Bernard L. Madoff)
Investment Securities LLC,)
Plaintiff,)
vs.) Adv. Pro. No.
) 09-01182 (BRL)
J. EZRA MERKIN, GABRIEL CAPITAL,)
L.P., ARIEL FUND LTD., ASCOT)
PARTNERS L.P., GABRIEL CAPITAL)
CORPORATION,)
Defendants.)
-----)

VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.
New York, New York
July 8, 2015

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR
JOB NO. 95461

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1 S. Pomerantz
2 describe, are just -- are just an index.
3 Q Large cap, small cap?
4 A Everything. It's actually Russell
5 3000.
6 Q And does that account hold all
7 3,000 names?
8 A Yes. It's a commingled fund. It's
9 a commingled fund that has a lot more than
10 IFIC's assets.
11 Q So, I thought you said earlier that
12 IFIC had a managed account for equities and a
13 managed account for international equities.
14 A Yes.
15 Q Right?
16 So, what's the difference between a
17 managed account and a commingled account?
18 A Well, legally a commingled account
19 has more than one owner. A managed account
20 typically just has one owner.
21 Q What is -- so, does IFIC have
22 specific rights to the securities in the
23 commingled account?
24 A Legally, I think we own shares of
25 the commingled account.

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1 S. Pomerantz
2 the asset management arm are two distinct
3 entities. They report to different people.
4 They probably share a CEO and nothing but a
5 CEO.
6 Goldman has divisions of
7 responsibilities, and they have people who
8 are there to insure the division of
9 responsibility. I don't -- I don't see a
10 problem with that.
11 Q And have you ever asked to see the
12 trade confirmations or monthly statements
13 from that account?
14 A I get monthly statements. But
15 again, I get -- I get monthly statements
16 regarding -- actually, the total plan as well
17 as the individual pieces.
18 Q And does the monthly statement show
19 the individual securities that are owned in
20 that account, or it shows the value of --
21 A It would show me shares of --
22 shares of Goldman Sachs' total stock alpha
23 fund, and then the number of shares that I
24 own, and the NAV of those shares.
25 Q It doesn't show you the underlying

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1 S. Pomerantz
2 Q Of some Goldman fund?
3 A Of a Goldman account. It's not a
4 '40 Act fund. It's an account. It's a
5 separately -- separate legal standing
6 account, and we own shares in that account.
7 Q Just like an LLC or something?
8 A It's like a hedge fund.
9 Q And someone at Goldman manages that
10 fund?
11 A It's an index fund, but presumably
12 somebody is managing it.
13 Q And you don't know who that person
14 is?
15 A It's probably a computer.
16 Q Do you know what broker-dealer that
17 fund uses?
18 A They probably use themselves.
19 Q Goldman Sachs?
20 A Yes.
21 Q And that's not a problem for you?
22 A That's not a problem.
23 Q Why not?
24 A I mean, Goldman Sachs is a large
25 entity. There is -- the broker-dealer and

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1 S. Pomerantz
2 holdings?
3 A No.
4 Q That is not a problem for you?
5 A It's a Russell 3000 index fund.
6 Q And so, it's okay with you to not
7 have the breakdown of individual holdings?
8 A I don't need to see a list of 3,000
9 holdings. If I want to look at the annual
10 report, I could do that.
11 Q Have you ever done that?
12 A Maybe years ago.
13 Q How do you know that that account
14 in fact owns all 3,000 stocks that you think
15 it owns?
16 A I think there is -- how do I know
17 it owns 3,000? They have represented to me
18 that it owns 3,000. It performs like it owns
19 3,000. The returns match the returns of the
20 index.
21 I have no reason to believe that it
22 doesn't own 3,000. It behaves exactly the
23 way I expect it to behave.
24 Q And that's good enough for you?
25 A Not -- that fact alone is not good

1 S. Pomerantz
2 enough. I mean, there is -- there is a brand
3 that is involved. I go to their offices
4 periodically. I meet with a lot of people --
5 as I said, I have about ten contacts in the
6 company -- on a variety of issues involving
7 IFIC. So I meet with, sometimes meet with
8 all of them, or sometimes meet with one or
9 two or three.
10 I feel very comfortable. I have no
11 reason to believe that something is happening
12 that is not as being represented.
13 Q I think you used the term "trust
14 but verify" --
15 A Yes.
16 Q -- in your report; right?
17 A Yes.
18 Q So in terms -- I understand the
19 "trust," and I understand people trust
20 Goldman Sachs. In terms of the "verify,"
21 what do you do to verify those
22 representations, other than go to their
23 offices and meet with people?
24 A I mean, this relationship has been
25 going on for about seven years. I do get

1 S. Pomerantz
2 Q Do you get monthly statements that
3 show the equity holdings?
4 A There is monthly statements. I can
5 go online any day and look at the holdings
6 that are in the portfolio.
7 Q Do you make the buy and sell
8 decisions, or is there someone that does
9 that?
10 A I make the decisions.
11 Q Just on the -- sticking with
12 Goldman for a minute, what quantitative
13 analysis have you done with respect to this,
14 whatever you called it, Goldman alpha stock
15 fund?
16 A Well, we have -- we have tracking
17 error targets for all of these different
18 products, as well as for the portfolio as a
19 whole. I -- I do measure the tracking error
20 on that, on that fund, and confirm that it is
21 close to what it is we are trying to achieve.
22 Q Do you do anything else?
23 A I also look at the performance.
24 I -- I do what I -- what I call performance
25 attribution, to try to identify where the

1 S. Pomerantz
2 statements. I know how the funds are
3 performing. They are performing in line with
4 what I expect.
5 I talk to people there who all seem
6 pretty competent to me at being able to do
7 the job that they are there to do. I don't
8 have -- I don't have any reason to think
9 otherwise.
10 I get a statement from Chase
11 Manhattan every month that tells me how much
12 money is in my checking account. I don't go
13 to Chase Manhattan and see the actual dollar
14 bills. They probably don't even exist;
15 right? Shares of stock don't really exist.
16 So I do what I can do and I do what
17 I think I need to do.
18 Q By the way, you have a Chase
19 Manhattan account. Do you have a brokerage
20 account anywhere?
21 A I have a brokerage account at
22 Vanguard.
23 Q So that's a -- it owns mutual
24 funds?
25 A It owns mutual funds and stocks.

1 S. Pomerantz
2 sources of the returns are coming from.
3 Q So with respect to this Goldman
4 Sachs alpha fund, what performance
5 attribution -- can you describe the
6 performance attribution you have done?
7 A Typically, what I do is what's
8 called factor analysis or factor
9 decomposition, where I look at the returns of
10 the fund, and I look at a regression of those
11 returns, against a variety of factors, and
12 then you basically ask yourself how much of
13 the returns is coming about because of those
14 factors and what is the residual.
15 Q Right. So --
16 A What's the unexplained piece, and
17 the variance of that unexplained piece is the
18 tracking error, and then the -- the
19 cumulative amount of that residual piece is
20 basically the return.
21 Q So, I don't want to know what you
22 typically would do. I want to know what you
23 have done with respect to IFIC.
24 A That's exactly what I do for IFIC.
25 Q And what do you then do with that

<p style="text-align: right;">Page 94</p> <p>1 S. Pomerantz</p> <p>2 Q I take it it's your opinion that</p> <p>3 that does not require in every circumstance</p> <p>4 performing various quantitative analyses that</p> <p>5 you have done in your report.</p> <p>6 A The only reason you wouldn't was if</p> <p>7 you couldn't, it was physically impossible,</p> <p>8 or if the analyses that I offer here are not</p> <p>9 useful or applicable to a particular</p> <p>10 strategy, or you have been able to confirm</p> <p>11 information through some other method or</p> <p>12 mechanism that I don't know about it.</p> <p>13 I don't know how you can confirm</p> <p>14 certain things without actually going through</p> <p>15 these analyses. Perhaps there are other</p> <p>16 analyses that people will go through. I'm</p> <p>17 not aware of them. I have never seen them.</p> <p>18 These are all the standard types of analyses</p> <p>19 that people go through to confirm certain</p> <p>20 things.</p> <p>21 Q Going back to the software fund,</p> <p>22 the WPG Software Fund, as an example, you had</p> <p>23 transaction-level data available to you;</p> <p>24 right?</p> <p>25 A I did.</p>	<p style="text-align: right;">Page 95</p> <p>1 S. Pomerantz</p> <p>2 Q When you were doing due diligence</p> <p>3 on that fund?</p> <p>4 A Yes.</p> <p>5 Q And so, you could have gone back</p> <p>6 and looked at trade confirmations; right?</p> <p>7 A I would have no need to do that.</p> <p>8 There was nothing about that particular</p> <p>9 strategy that was contingent upon the</p> <p>10 execution ability.</p> <p>11 Q So, you could have done it. You</p> <p>12 just concluded that you didn't need to.</p> <p>13 A Actually, you know, I take that</p> <p>14 back. That actually implicitly was done</p> <p>15 within the analysis. Within the performance</p> <p>16 attribution framework, it would have</p> <p>17 identified certainly types of -- it would</p> <p>18 have identified some of the types of things</p> <p>19 that are identified in this report.</p> <p>20 Even though transaction-level</p> <p>21 detail really is not relevant for that</p> <p>22 particular strategy, the performance</p> <p>23 attribution that was performed would</p> <p>24 actually -- did actually identify certain</p> <p>25 analyses that were transaction level, but</p>
<p style="text-align: right;">Page 96</p> <p>1 S. Pomerantz</p> <p>2 they were never significant.</p> <p>3 Q Did you go and look at individual</p> <p>4 trade confirmations in your due diligence of</p> <p>5 the software fund?</p> <p>6 A No, I didn't look at confirmations,</p> <p>7 but I will give you as an example, I was</p> <p>8 aware of where the fund traded relative to</p> <p>9 VWAP. I was aware of that. And it just</p> <p>10 didn't move me one way or another as being</p> <p>11 significant. It didn't raise a red flag. It</p> <p>12 didn't seem significant to me at all as far</p> <p>13 as my understanding of that particular hedge</p> <p>14 fund strategy, although implicitly, it's</p> <p>15 actually being calculated, but that's just</p> <p>16 because the software is doing it.</p> <p>17 Q Have you ever looked at trade</p> <p>18 confirmations as part of your due diligence?</p> <p>19 A Actually, in a variety of the tax</p> <p>20 shelter cases that I dealt with, the</p> <p>21 confirmations were actually -- were actually</p> <p>22 specifically looked at, and a variety of my</p> <p>23 opinions actually centered around things that</p> <p>24 were on the confirmations or that were not on</p> <p>25 the confirmations that should have been.</p>	<p style="text-align: right;">Page 97</p> <p>1 S. Pomerantz</p> <p>2 Q Those were confirmations of equity</p> <p>3 trades?</p> <p>4 A Yeah. They actually were</p> <p>5 confirmations of equity trades, and there was</p> <p>6 actually information on the trades that</p> <p>7 should have been there and wasn't there, and</p> <p>8 that was -- that was actually a part of my</p> <p>9 opinion. It was a small piece, but it was</p> <p>10 actually a part of the opinion.</p> <p>11 Q Okay. What information should have</p> <p>12 been there in the tax shelter cases that</p> <p>13 wasn't?</p> <p>14 A In those particular cases -- in</p> <p>15 those particular cases, the stock was being</p> <p>16 purchased on a forward basis, and there would</p> <p>17 have been an implied interest rate, and on</p> <p>18 the confirmation, there was actually a box</p> <p>19 that said interest, in anticipation of a</p> <p>20 forward settlement, and there was a zero in</p> <p>21 that box, when there actually should have</p> <p>22 been a real value. The confirmation actually</p> <p>23 did not represent the actual amount of money</p> <p>24 that was supposed to move pursuant to that</p> <p>25 stock transaction.</p>

1 S. Pomerantz
2 I mean, there were a host of other
3 red flags and issues, but actually in that
4 particular matter, there was an issue with
5 the confirmations, and I did identify it as
6 part of my due diligence of the transaction.

7 Q Well, you didn't do due diligence
8 of the transaction in the tax shelter cases;
9 right?

10 A Yes, I did.

11 Q You did due diligence in connection
12 with someone entering the transaction?

13 A I did due diligence -- I actually
14 discussed the due diligence -- there were a
15 variety of partners involved in these
16 transactions, but there is a small piece of
17 the transaction where an investment advisor
18 is actually facilitating the execution of a
19 particular strategy, and my opinions had to
20 do with the due diligence that was being
21 performed by the investment advisor regarding
22 the totality of that transaction.

23 Q So, in those cases, who -- what
24 brokerage firm issued the confirmations?

25 A They were mainly coming from banks

1 S. Pomerantz
2 like UBS or Deutsche Bank, were the two large
3 banks that were involved.

4 Q And those large banks issued faulty
5 confirmations?

6 A I don't want to say faulty. I'm
7 not here to assign value judgments or blames.
8 Part of my opinion was -- had to do with
9 information that was on the confirmation,
10 that should have been on the confirmation,
11 could have been on the confirmation. I put
12 that information into my reports. In some
13 cases, cases settled. In some cases, the
14 courts opined as a result of litigation, and
15 it was what it was.

16 Q What were the court opinions?

17 A You could read Bemont versus United
18 States of America. You could read New
19 Phoenix versus Commissioner of the IRS.
20 There is one other case that is in bankruptcy
21 court, and the plaintiff is listed on my CV.

22 Q So back to my question, which was:
23 In connection with your due diligence of any
24 investment advisor or hedge fund, have you
25 ever reviewed trade confirmations?

1 S. Pomerantz
2 A Well, I just gave you examples in a
3 litigation context.

4 Q Right. So, my question is: In
5 your due diligence of -- in your performing
6 due diligence on an investment advisor or
7 hedge fund manager, have you ever reviewed
8 trade confirmations?

9 A No. I reviewed transaction-level
10 data, and I would input transaction-level
11 data into systems to perform certain
12 analyses. But I -- I never had a need to
13 look at the confirmations.

14 Q So, you never asked to look at
15 confirmations in any of the due diligence
16 that you have done over the last 20 years?

17 A I was never -- I never had a need
18 to do that.

19 Q And in your -- in due diligence --
20 by the way, when you referred to your work as
21 an expert in the tax shelter cases as due
22 diligence, that was always a review after the
23 fact after a challenge by the IRS; correct?

24 A Yes.

25 Q Okay. So in your work performing

1 S. Pomerantz
2 due diligence on investment advisors or hedge
3 funds, have you -- have you had occasion
4 to -- strike that.

5 In your work performing due
6 diligence on hedge fund managers or on
7 investment advisors, have you ever compared
8 on a transaction-by-transaction basis
9 transaction price versus the daily high-low
10 range? Has that been something you have done
11 in your due diligence work?

12 A I have looked at transaction prices
13 against VWAP, but I have not looked at
14 transactions versus highs and lows. But I
15 have looked against VWAP as part of my due
16 diligence.

17 Q Why haven't you looked at
18 transactions versus highs and lows as part of
19 your due diligence?

20 A I never had a reason to.

21 Q And I take it you don't believe
22 that the due diligence that you have
23 performed has been faulty for not having
24 looked at that; correct?

25 A It depends on the circumstances.

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<p>1 S. Pomerantz</p> <p>2 and using a variety of statistical tools. I</p> <p>3 have to know how to price options. I have to</p> <p>4 understand what a Monte Carlo simulation is</p> <p>5 and how do I build a Monte Carlo simulation.</p> <p>6 But I can do all of that to develop</p> <p>7 expectations for how the strategy should</p> <p>8 perform.</p> <p>9 Q And did you do all of that?</p> <p>10 A Yes, I did all of that. And my</p> <p>11 observation then is that the returns that I</p> <p>12 am actually seeing from Beacon do not fit</p> <p>13 that expectation. That is a concern of mine,</p> <p>14 and I communicated that.</p> <p>15 Q How did you communicate that?</p> <p>16 A I told the partnership, I do not</p> <p>17 believe that he is executing split-strike</p> <p>18 strategy. I don't know what he is doing, but</p> <p>19 I -- you know, I would say that this is a</p> <p>20 fraud of sorts. This is a fraud.</p> <p>21 Q So, you told Gordon that BLMIS was</p> <p>22 a fraud?</p> <p>23 A That -- yes, but -- I did -- I did</p> <p>24 say that, that he is either engaged in a</p> <p>25 fraud or he is doing something that I can't</p>	<p>1 S. Pomerantz</p> <p>2 comprehend.</p> <p>3 Q Did you say he is engaged in a</p> <p>4 fraud or did you say, either I don't</p> <p>5 understand it or it's a fraud?</p> <p>6 A I said both. I'm not -- I can't</p> <p>7 conclude that he is engaged in fraud. I have</p> <p>8 no information, I know nothing. I could</p> <p>9 barely talk to Danziger, let alone talk to</p> <p>10 Bernie, so, I don't know what Bernie is</p> <p>11 doing. I just know that if you are</p> <p>12 describing your strategy as this, that is not</p> <p>13 true. That is a lie. That is a fraud. In</p> <p>14 my book, that is a fraud. To misrepresent or</p> <p>15 to lie, that is a fraud.</p> <p>16 So, he is either a fraud or he is</p> <p>17 doing something that I can't conjure, I can't</p> <p>18 imagine, but he is certainly not doing what</p> <p>19 he says he is doing.</p> <p>20 Q Did you communicate that in writing</p> <p>21 to the Gordons?</p> <p>22 A No.</p> <p>23 Q Why not?</p> <p>24 A My practice was to not offer my</p> <p>25 opinions in writing. That is not the way</p>
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<p>1 S. Pomerantz</p> <p>2 people do things.</p> <p>3 Q So that is not part of -- in terms</p> <p>4 of maintaining diligence files, you wouldn't</p> <p>5 expect someone to maintain a conclusion like</p> <p>6 that in writing?</p> <p>7 A You can ask Arthur what he does. I</p> <p>8 don't know. I can't speak for Arthur. I can</p> <p>9 speak for myself.</p> <p>10 I do my analysis, I have my</p> <p>11 observations, and I communicate my</p> <p>12 observations.</p> <p>13 Q And did you give him your Monte</p> <p>14 Carlo analysis and your correlation analysis</p> <p>15 and R-squared?</p> <p>16 A I actually had shown him the</p> <p>17 results of my Monte Carlo analysis, and to</p> <p>18 explain what it was that I expected and what</p> <p>19 it was that I was seeing, and how I would</p> <p>20 characterize the difference between them.</p> <p>21 Q Did you give him a copy of that for</p> <p>22 his due diligence files?</p> <p>23 A You know, I showed it to him on a</p> <p>24 piece of paper. I don't know what happened</p> <p>25 to it.</p>	<p>1 S. Pomerantz</p> <p>2 Q Well, what did you do with the</p> <p>3 sheet of paper?</p> <p>4 A What would I do with it?</p> <p>5 Q What did you do with it?</p> <p>6 A I don't remember.</p> <p>7 Q Do you have it somewhere?</p> <p>8 A No.</p> <p>9 Q How do you know you don't have it</p> <p>10 somewhere?</p> <p>11 A Because I have looked through all</p> <p>12 my files.</p> <p>13 Q As soon as Madoff confessed, you</p> <p>14 started looking through your files for it and</p> <p>15 couldn't find it?</p> <p>16 A No, no. I think as part of the</p> <p>17 production in this case, I was asked to</p> <p>18 produce any documents that I had that were</p> <p>19 relevant to my opinions, and there is a fair</p> <p>20 amount of analysis that I have produced from</p> <p>21 my efforts at Gordon Asset Management, but</p> <p>22 that is the totality of what I have.</p> <p>23 Q So, you don't have your Monte Carlo</p> <p>24 analysis, and you don't have anything where</p> <p>25 you communicated -- any written record of</p>

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1 S. Pomerantz
2 Q Knowing that they were invested in
3 this fund that you had told the fund manager
4 was a fraud?
5 A I mean, those statements are true,
6 and I reiterated my opinions as I could, and
7 that's -- I reiterated my opinions as I
8 could, and I think the firm divested in large
9 measure because of my opinions.
10 Q So, they had more than 20 million
11 at some point?
12 A At some point, yes.
13 Q How much more?
14 A I don't know. There were other
15 funds that I performed due diligence for, and
16 they chose not to invest at all.
17 Q But on this one, they kept some of
18 the investment?
19 A Yes.
20 Q And when you met with investors
21 subsequent to 2005, did you ever tell any of
22 the investors, well, we have got this one
23 investment that I think is a fraud but the
24 manager continues to invest in?
25 A I think Arthur was clear with

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1 S. Pomerantz
2 put or keep their money with Gordon's;
3 correct?
4 A Yes.
5 Q And the reason that you would meet
6 with them is you were held out as the due
7 diligence consultant because of your
8 quantitative background; correct?
9 A I was there for many reasons, not
10 just that.
11 Q That was one of them?
12 A Yes.
13 Q And when those investors came in to
14 meet with you, did you tell any of those
15 investors, you know, we have got this one
16 investment, it's \$20 million, and I think
17 it's a fraud, but we kept it anyway?
18 A People actually knew that we were
19 invested in Beacon, and people had their own
20 trepidations about that.
21 Q Right.
22 A And, you know, ironically, there
23 were investors who did not want us to divest
24 from Beacon, who actually wanted us to put
25 more money into Beacon. But investors knew

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1 S. Pomerantz
2 people that there was an investment with
3 Beacon.
4 Q Right. But did you tell any of the
5 investors that you met with after 2005 that
6 the fund that you were performing due
7 diligence for and that you were meeting with
8 them as part of their due diligence, because
9 you were the quantitative team, that there
10 was a \$20 million investment in something
11 that you thought was a fraud?
12 A You know, I think my opinion was
13 that I don't understand what's going on, I
14 don't know what he is doing, he is not doing
15 what he says he is doing. That was my
16 opinion.
17 And investors knew that we were
18 invested with Beacon. Investors knew pretty
19 much everything about Madoff that people
20 publicly knew.
21 Q So, I would like to try and get an
22 answer to my question. Maybe I need to break
23 it down.
24 After 2005, you met with investors
25 as part of their due diligence on whether to

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1 S. Pomerantz
2 that we were invested in Beacon, and they
3 knew all of the concerns that existed.
4 Q I don't think you have answered my
5 question.
6 MR. STEINER: So if I could get the
7 reporter to read it back.
8 (Record read.)
9 A I would not have said that, because
10 I did not know that Madoff was a fraud.
11 Q Well, did you tell any of the
12 investors who you met with that you thought
13 it was a fraud and yet the fund kept the
14 investment anyway?
15 A I don't -- you know, I think it --
16 I don't know that it's fair to say I thought
17 it was a fraud. I did not know what he was
18 doing. I did not think he was executing
19 split strike. I was clear about that. I did
20 not know what he was doing, but I would have
21 no way of knowing what he really was doing.
22 If I use the word "fraud," it's as
23 a pejorative. It's not as a legally -- it's
24 not a legal word in the way that a fraud
25 examiner would use it. To me, it just means

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<p>1 S. Pomerantz</p> <p>2 done the type of analysis that is here, and</p> <p>3 it actually would have confirmed my</p> <p>4 suspicions.</p> <p>5 I think if someone wanted to</p> <p>6 assuage my suspicions, if that was their</p> <p>7 objective, then they would have provided me</p> <p>8 with those types of document.</p> <p>9 Q And if you were given those types</p> <p>10 of documents, it's possible that those</p> <p>11 documents would have assuaged your</p> <p>12 suspicions?</p> <p>13 A Well, are you asking me</p> <p>14 hypothetically or are you asking me in this</p> <p>15 case? Because, as I said, in this specific</p> <p>16 case of -- call it Madoff or Danziger or</p> <p>17 Beacon, in this specific case, if those</p> <p>18 documents were provided to me, they would not</p> <p>19 have assuaged my suspicions, they would have</p> <p>20 confirmed my suspicions. Because the</p> <p>21 analysis that I have done here is the</p> <p>22 analysis that I would have done had I been</p> <p>23 provided with that information.</p> <p>24 Q You would have done everything that</p> <p>25 is in your report?</p>	<p>1 S. Pomerantz</p> <p>2 A I don't know if I would have done</p> <p>3 everything. I would have done enough to</p> <p>4 absolutely confirm my suspicions, but that's</p> <p>5 in the world of hypothetical.</p> <p>6 Q The -- did you have other times</p> <p>7 when you performed diligence on a</p> <p>8 Madoff-related investment?</p> <p>9 A Yes.</p> <p>10 Q When else?</p> <p>11 A In 2008, early 2008, I was asked by</p> <p>12 another fund of funds that I was affiliated</p> <p>13 with, in the same manner, of providing</p> <p>14 one-off due diligence on investments.</p> <p>15 Q Which fund is that?</p> <p>16 A It's called Hunt Financial</p> <p>17 Ventures.</p> <p>18 Q Hunt?</p> <p>19 A Hunt. That Hunt.</p> <p>20 Q The Texans we were talking about?</p> <p>21 A Yeah.</p> <p>22 Q And what were you engaged by Hunt</p> <p>23 to do?</p> <p>24 A Perform due diligence on a one-off</p> <p>25 basis for hedge fund investments that they</p>
Page 152	Page 153
<p>1 S. Pomerantz</p> <p>2 were considering within the fund of funds</p> <p>3 that they had, as well as negotiate with the</p> <p>4 individual hedge funds themselves a variety</p> <p>5 of terms.</p> <p>6 Q And how many diligence assignments</p> <p>7 did you do for Hunt?</p> <p>8 A Maybe 100.</p> <p>9 Q All in early 2008?</p> <p>10 A No, no. My involvement with Hunt</p> <p>11 was -- I don't know when it started, and they</p> <p>12 actually still do call me up periodically.</p> <p>13 Q And how are you compensated by</p> <p>14 Hunt?</p> <p>15 A Hourly.</p> <p>16 Q And what do you charge them an</p> <p>17 hour?</p> <p>18 A I charge them 750 an hour.</p> <p>19 Q So, they get a discount from your</p> <p>20 regular rate of 824?</p> <p>21 A The rate is similar to what I am</p> <p>22 ultimately charging.</p> <p>23 Q The -- and what rate do you</p> <p>24 charge -- did you charge Gordon?</p> <p>25 A I think when I left there, it</p>	<p>1 S. Pomerantz</p> <p>2 was -- it was probably around 700 an hour.</p> <p>3 Q When -- when you did a diligence</p> <p>4 report for Hunt, what would that entail or</p> <p>5 what work product would you create?</p> <p>6 A Similar. I would -- I would</p> <p>7 interview the manager. I mean most of the</p> <p>8 funds that Hunt was investing in were</p> <p>9 actually new, new hedge funds, I think with</p> <p>10 very few exceptions where they were</p> <p>11 established funds with assets, significant</p> <p>12 assets, significant track records. That was</p> <p>13 very rare.</p> <p>14 Most of the -- most of the funds</p> <p>15 that I was looking at was -- were basically</p> <p>16 new, were seed investments, and I would</p> <p>17 basically try to go through as much as I</p> <p>18 could of the framework that we have</p> <p>19 discussed, and then communicate to Hunt, and</p> <p>20 sometimes we would move forward with the</p> <p>21 relationship, and there would be some</p> <p>22 negotiations that were involved.</p> <p>23 Q And with respect to new funds,</p> <p>24 there wouldn't be quantitative analysis;</p> <p>25 right? Because they wouldn't have a track</p>

<p style="text-align: right;">Page 182</p> <p>1 S. Pomerantz</p> <p>2 support a firm.</p> <p>3 Q Going back to the example of the</p> <p>4 Goldman Sachs employee who manages a</p> <p>5 discretionary account for high net worth</p> <p>6 individuals, are you familiar with a</p> <p>7 traditional model where that person, whether</p> <p>8 you call it a broker or an investment</p> <p>9 advisor, was compensated based on the</p> <p>10 commissions that were generated for the</p> <p>11 accounts?</p> <p>12 A I mean, there are and have been</p> <p>13 some people in the industry who get</p> <p>14 compensated that way. I mean, I can't speak</p> <p>15 to any specifics.</p> <p>16 Q So, you are familiar with the fact</p> <p>17 that it happens?</p> <p>18 A I have heard these people exist.</p> <p>19 They don't interface with the institutional</p> <p>20 marketplace, but I know they exist.</p> <p>21 Q And you don't know how big that</p> <p>22 market is or was?</p> <p>23 A It doesn't interface with the</p> <p>24 institutional marketplace. You are not</p> <p>25 hiring a broker. You are not going to pay</p>	<p style="text-align: right;">Page 183</p> <p>1 S. Pomerantz</p> <p>2 somebody to generate trades.</p> <p>3 Q You -- you refer in your report to</p> <p>4 the AIMA guidelines.</p> <p>5 A Yes.</p> <p>6 Q And the first one, the first AIMA</p> <p>7 due diligence questionnaire I think was</p> <p>8 created in 1997; is that right?</p> <p>9 A Yes.</p> <p>10 Q And prior to that, there hadn't</p> <p>11 been an industry due diligence?</p> <p>12 A Well, I think there have always</p> <p>13 been people who maintained their own. I</p> <p>14 mentioned earlier companies like Russell,</p> <p>15 Cowen and Wilshire. These are people who</p> <p>16 have been doing diligence from probably the</p> <p>17 time I was born, and they -- they have their</p> <p>18 own proprietary approaches to due diligence.</p> <p>19 AIMA saw itself as in a position to</p> <p>20 basically provide some codification of that</p> <p>21 for people who did not have the internal</p> <p>22 resources to develop their own.</p> <p>23 Q And you are familiar with the AIMA</p> <p>24 guidelines?</p> <p>25 A The due diligence questionnaires?</p>
<p style="text-align: right;">Page 184</p> <p>1 S. Pomerantz</p> <p>2 Q The questionnaires.</p> <p>3 A Yes.</p> <p>4 Q And am I right that those</p> <p>5 questionnaires don't refer to or describe any</p> <p>6 quantitative analysis that is required to be</p> <p>7 performed as part of the due diligence?</p> <p>8 A I don't know what you mean by that.</p> <p>9 They don't identify specific quantitative</p> <p>10 analyses, although sometimes they will say,</p> <p>11 such as X, Y, Z, but they will all address</p> <p>12 the need for quantitative analysis when</p> <p>13 applicable.</p> <p>14 Q When you say "when applicable,"</p> <p>15 what do you mean by that?</p> <p>16 A Well, again, it depends upon the</p> <p>17 strategy that you are involved in, and</p> <p>18 whether or not you have any historical data.</p> <p>19 If you take a new fund that is going to be</p> <p>20 fundamentally based, and there is no track</p> <p>21 record, well, you are not going to be able to</p> <p>22 do quantitative analysis if nothing exists.</p> <p>23 (Pomerantz Exhibit 3, 1997</p> <p>24 Guidelines marked for identification, as</p> <p>25 of this date.)</p>	<p style="text-align: right;">Page 185</p> <p>1 S. Pomerantz</p> <p>2 Q I am going to hand you what I have</p> <p>3 marked as Pomerantz Exhibit 3, which I</p> <p>4 believe is the 1997 guidelines that you refer</p> <p>5 to in your report. Is that right?</p> <p>6 A Yes.</p> <p>7 Q And you are familiar with those</p> <p>8 guidelines?</p> <p>9 A Yes.</p> <p>10 Q So -- so, I guess if we could for</p> <p>11 starters, if you could point me to what</p> <p>12 provisions in there specify examples of the</p> <p>13 quantitative analysis that should be</p> <p>14 performed.</p> <p>15 A Well, there are a variety of points</p> <p>16 here. If you go to the bottom of page three,</p> <p>17 there is a discussion of drawdown, which is</p> <p>18 something that they suggest you be aware of</p> <p>19 and to identify them, and to understand why</p> <p>20 they happened. That is a quantitative issue.</p> <p>21 A discussion of the capacity of</p> <p>22 your strategy, and the markets that you trade</p> <p>23 in, that is a quantitative issue.</p> <p>24 A lot of these questions here are</p> <p>25 answered through quantitative metrics. There</p>

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1 S. Pomerantz
2 prerequisite to this report. I don't assume
3 that anywhere.
4 What I do is, I -- because I view
5 it as a challenge. What I am doing is, I am
6 basically saying you have to identify the
7 sources of the return, and so I imagine that
8 if I were living at that point in time, and I
9 had the data and tools available at that
10 time, what would I have done? And this
11 report identifies what I would have done.
12 Q And when you started out doing your
13 work, it was with the benefit of knowing that
14 Mr. Madoff had confessed to running a Ponzi
15 scheme; correct?
16 A A lot of things have happened since
17 then; right? A lot of things have happened.
18 I mean, maybe Greece goes into default. A
19 lot of things have happened, but they are not
20 relevant to my opinions, and they are not
21 relevant to any of the analysis that I have
22 done.
23 Q Now --
24 MR. SHEEHAN: The record should
25 reflect that what he was referring to was

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1 S. Pomerantz
2 the various quantitative analyses in your
3 report, did you perform those analyses, or
4 did the Duff & Phelps employees perform those
5 analyses?
6 A Combination of both. I mean, I --
7 some of them I did by myself. Sometimes
8 somebody else did them and I reviewed them.
9 Q Which ones --
10 A Check them over.
11 Q Which ones did you do yourself?
12 A I can't recall the specifics of it.
13 I know that there is an analysis here that
14 has to do with daily volatility versus
15 monthly versus quarterly, and I remember that
16 was something I did myself.
17 Most of the others I think I
18 reviewed somebody else's work. But I -- I
19 had to tell people what the calculation was
20 that I wanted to do. In some cases, the
21 analysis is pretty computer intensive, other
22 cases it's not.
23 But that is the only example that I
24 can think of that I did by myself. The rest,
25 I think I just told someone what to do and

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1 S. Pomerantz
2 Exhibit 3. Is that it? Is that what --
3 MR. STEINER: I think he was most
4 recently referring to Exhibit 1, which is
5 his report.
6 THE WITNESS: No, 3.
7 MR. SHEEHAN: 3, this thing. He
8 was reading this.
9 THE WITNESS: Counsel, is this a
10 good time for a break?
11 MR. STEINER: Sure.
12 MR. SHEEHAN: What's that?
13 MR. STEINER: He would like a
14 break.
15 THE VIDEOGRAPHER: The time is
16 3:28 p.m. This is the end of tape number
17 three.
18 We are off the record.
19 (Recess taken.)
20 THE VIDEOGRAPHER: The time is
21 3:49 p.m. This is the start of tape
22 number four.
23 We are on the record.
24 BY MR. STEINER:
25 Q Now, Dr. Pomerantz, with respect to

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1 S. Pomerantz
2 then checked the results.
3 Q When you told someone what to do
4 and checked the results, how did that process
5 work?
6 A Usually I would sit down and tell
7 them, tell them what to do, how to do it.
8 Sometimes they understand what I mean.
9 Sometimes I have to write down a formula.
10 And most of the -- most of the analysis is
11 residing within spreadsheets, where these
12 charts are basically all coming out of a
13 spreadsheet. And the data that's behind the
14 analysis is in the same spreadsheet, so I can
15 trace back the formulas.
16 Q And by the way, one of the exhibits
17 to your report includes all the documents
18 that you reviewed in connection with your
19 report; right?
20 A Yes.
21 Q Approximately how many pages did
22 you review in connection with issuing your
23 report?
24 A Me, personally?
25 Q Yes.

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1 S. Pomerantz
2 A I would put it in the thousands.
3 Q And you understand that the list
4 that is attached to your report includes
5 many, many multiples of that number?
6 A Yes.
7 Q Why did you include all of the
8 pages that you didn't review?
9 A I -- those are documents that were
10 reviewed by other people that didn't have
11 information that was relevant to my opinions.
12 Q Did you maintain a list of the
13 pages that you actually reviewed?
14 A No.
15 Q Did you keep any records of which
16 pages you actually reviewed in forming your
17 opinions?
18 A No.
19 Q And if someone else reviewed the
20 page and determined it wasn't relevant to
21 your opinion, is that -- do you equate that
22 with you having reviewed the page?
23 A Well, no. When I say that I
24 reviewed a thousand pages, that is a thousand
25 pieces of paper or 2,000 pieces of paper that

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1 S. Pomerantz
2 I looked at. Other people may have looked at
3 other pages, told me what was in them, and I
4 would conclude that those weren't relevant
5 for what I needed.
6 Q But you certainly didn't review
7 tens of thousands of pages in connection with
8 issuing your report; correct?
9 A I did not. Like as an example,
10 there are statements that -- there are
11 monthly statements that identified
12 transactions and holdings. Somebody was
13 responsible for looking at every single one,
14 but it wasn't me. I did look at a subset so
15 that I understand what those statements are,
16 and the information that is on them, but I
17 did not look at every single one of them.
18 Q And you have testified enough times
19 to know that, and issued expert reports
20 enough to know that one of your
21 responsibilities as an expert is to disclose
22 the documents that you considered in
23 connection with your -- issuing your report;
24 correct?
25 A Yes.

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1 S. Pomerantz
2 Q And so, if you look at Schedule A
3 to appendix two.
4 A Yes.
5 Q That is the list of documents that
6 you provided and annexed to the report that
7 you signed as to the documents that you
8 considered in forming your opinions; correct?
9 A Yes.
10 Q But you didn't personally review or
11 consider all of these documents; correct?
12 A That's correct.
13 Q So, if I wanted to know which
14 documents you considered, how would I make
15 that determination?
16 A I think that I reviewed personally
17 documents that are a part of the opinions
18 that I am offering, so, if there is an
19 analysis here about transactions, I have
20 looked at a subset of all of the documents
21 that discuss transactions.
22 I can't tell you which ones I
23 looked at. You know, if there are 30,000
24 confirmations, I could tell you I looked at
25 ten, but I couldn't tell you which ten of

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1 S. Pomerantz
2 those 30,000.
3 Q You didn't keep track?
4 A No.
5 Q And you didn't feel that that was
6 important to do?
7 A I -- no, I don't see the relevance
8 of it.
9 Q No one asked you to keep track of
10 what documents you actually reviewed?
11 A No.
12 Q And you said if there were 30,000
13 confirmations, you looked at something like
14 ten?
15 A I personally may have looked at ten
16 to -- someone -- yeah, I personally looked at
17 ten to confirm that what I am being told
18 about the confirmations is -- is accurate.
19 For example, I have talked about how the
20 confirmations are backwards. The buyer is
21 the seller, or the seller is identified as
22 the buyer. Have I looked at 30,000
23 transactions, to tell you that I have noticed
24 that on 30,000? No, I haven't. But I have
25 looked at ten, and I have seen that on the

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1 S. Pomerantz
2 really done at 100. So, in that scenario,
3 Madoff is actually in the range, but the
4 \$100.04 will appear to be out of the range,
5 but it's not.
6 Q So let's assume that the reported
7 range is -- that it's a buy on a principal
8 trade, and the price, inclusive of the dealer
9 markup, is \$30.04, okay, and it's a buy by
10 Ascot. Have you got that?
11 A Yes.
12 Q Okay. And the reported range of
13 the day is \$30.02 to \$30.52.
14 A Yes.
15 Q In your opinion, is that trade
16 within the range or outside of the range?
17 A If Bernie has marked up the trade
18 to \$30.04, I'm going to consider that -- I'm
19 going to consider that as a trade that
20 actually took place at \$30.
21 Q And even though the price that
22 Madoff charged to Ascot was \$30.04?
23 A That's correct.
24 Q And even though you don't know what
25 price that would be reported to the exchange

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1 S. Pomerantz
2 A That's correct. But when you look
3 at the high and the lows, those are numbers
4 that somebody else is also receiving a
5 commission on. So I am taking Madoff's
6 commissions off the table.
7 Q Well, the trade is between Madoff
8 and the customer; right?
9 A Yes.
10 Q And you don't know whether that
11 trade would be reported by BLMIS as a \$30
12 trade or a \$30.04 trade; right?
13 A I don't know what Madoff is
14 reporting.
15 Q And you don't know whether it's
16 actually required to be reported at all?
17 A I don't know what Madoff is
18 reporting.
19 Q And nevertheless, you -- and if
20 the --
21 A I am trying to give Madoff the
22 benefit of the doubt by adjusting the price
23 on the confirm to be in line with what's
24 there, so I'm trying to give him four cents
25 grace on the price of the trade.

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1 S. Pomerantz
2 at?
3 A That's correct.
4 Q So, what's your basis for doing
5 that, given that you don't know whether
6 the -- and to the extent the trade is
7 reported by the -- by the broker acting as
8 principal to the exchange, that would be
9 included in setting the daily high and low;
10 right?
11 A I'm going to look at the high and
12 low that the exchange tells me trades took
13 place at.
14 Q Right. And that -- and the
15 exchange's high and low, to the extent a
16 broker acting as a principal reports
17 information to the exchange, the exchange's
18 high and low would include the information
19 reported by the broker; right?
20 A It would, but Bernie is really
21 getting a four-cent commission on that
22 particular trade that you are talking about.
23 Q You agreed with me a few moments
24 ago that brokers don't get commissions on
25 principal trades, they earn a markup; right?

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1 S. Pomerantz
2 Q If principal -- right. If a
3 principal transaction earns the markup,
4 right, if that gets reported to the exchange
5 at \$30.04, that would be in the range; right?
6 A I don't know what Madoff's
7 reporting to the exchange. I just know what
8 the exchange tells me the high and the low
9 is. And then I try to be conservative in
10 estimating what Bernie is reporting on his
11 confirmation.
12 Q As between -- on a principal trade,
13 there is no commission; right?
14 A That's correct.
15 Q Okay. So, the price that Ascot
16 would pay in that situation would be \$30.04;
17 right?
18 A Yes.
19 Q They wouldn't pay a commission on
20 top of it, but they would pay \$30.04?
21 A Yes.
22 Q If they then -- and if someone had
23 done the analysis that you suggest of
24 comparing that price of 30 -- that they paid
25 of \$30.04 to the range of \$30.02 to \$30.52,

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1 S. Pomerantz
2 that would be -- the \$30.04 would be within
3 the range; correct?
4 A Yes.
5 Q And yet in your opinion, you have
6 considered that to be outside of the range by
7 deducting four cents; right?
8 A Yes.
9 Q And do you know how many of your
10 out-of-range trades fall into that category?
11 A No.
12 Q Would you be surprised if more than
13 half of the trades that you have identified
14 as being out of range fell into that
15 category?
16 A No. I would have to look and see,
17 but I don't know.
18 Q And do you agree with me that for
19 purposes of determining -- strike that.
20 And by the way, this four-cent
21 adjustment that you made, that also affects
22 your VWAP analysis; right?
23 A It -- it does. My concerns about
24 VWAP, as I point out, go far beyond a
25 four-cent issue. My analysis shows Madoff

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1 S. Pomerantz
2 be a significant number, because many of the
3 numbers that are there are calculated
4 independent of VWAP. It would -- it might
5 change the residual, but --
6 Q Well, isn't the first thing that
7 you did calculate the amount that was the
8 difference between the trade and VWAP, and
9 you -- and you put that into the first
10 category of execution?
11 A Well, there are several things that
12 I am calculating in there; right? I'm
13 calculating VWAP. I'm also calculating
14 market timing. I'm looking at the dividends
15 that are being paid. I'm looking at the
16 pricing of options. And then there is a
17 residual.
18 I don't think those numbers are
19 going to change very much if you want to
20 employ your approach.
21 Q Did you -- in performing your
22 report or having someone else perform your
23 report, is that something that you checked,
24 how those numbers -- did you calculate what
25 those numbers would be --

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1 S. Pomerantz
2 doing 35 cents better than VWAP. So, I don't
3 really even think about a four-cent
4 adjustment when he is 35 cents away.
5 Q It would nevertheless change the
6 analysis; right?
7 A You can choose to do it. If you
8 choose to do the analysis that way, you can,
9 and it will change the number. It won't
10 change -- it will not materially change the
11 35 number.
12 Q Well, it will change it by four
13 cents each way; right?
14 A Call it 30. So, say the 35 is 30.
15 That is no material difference to me.
16 Q And it would likewise change your
17 performance attribution analysis; correct?
18 MR. SHEEHAN: Object to the form of
19 that question.
20 A I don't know -- if you do it that
21 way, and you look at the performance
22 attribution that I have, you might -- I can't
23 even measure how much of a difference it will
24 be. It could be a percent, I don't know.
25 It wouldn't -- I don't expect it to

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1 S. Pomerantz
2 A No, I wouldn't calculate them. I
3 understand your point, and I know that it has
4 minor impact. It's not going to -- it's not
5 going to impact the options transactions.
6 It's not going to impact the market timing.
7 It's not going to impact the dividends.
8 Q It's going to impact the execution;
9 right?
10 A You might move a small piece of the
11 VWAP number into the residual or vice-versa.
12 But, you know, as I said, if your difference
13 from VWAP is 35 cents or 30 cents or four
14 cents, that is not a material difference to
15 me.
16 Q If you -- do you know how many
17 total shares were traded in the time period
18 covered by your attribution analysis?
19 A I don't recall.
20 Q Do you think it was something in
21 excess of -- something in excess of
22 2 billion?
23 A Two billion shares? By Merkin? I
24 don't know. I would have to either look or
25 figure it out. I don't know.